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No. 97-1982

In the Supreme Court of the United States

OCTOBER TERM, 1997

IN RE PETER FRANCIS GERACI, PETITIONER

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES TRUSTEE IN OPPOSITION

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QUESTION PRESENTED

Whether, in limiting the attorney's fee petitioner can charge for simple, no-asset bankruptcy cases, the bankruptcy court abused its discretion in considering the fees charged for comparable bankruptcy cases in the locale.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-16a) is reported at 138 F.3d 314. The opinion of the district court (Pet. App. 17a-23a) is reported at 208 B.R. 907. The opinion of the United States Bankruptcy Court (Pet. App. 24a-64a) is reported at 209 B.R. 106.

JURISDICTION

The court of appeals entered its judgment on March 9, 1998. The petition for a writ of certiorari was filed on June 5, 1998. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The Bankruptcy Code requires "[a]ny attorney representing a debtor in a case under this title" to file with the bankruptcy court "a statement of the compensation paid or agreed to be paid, if such payment or agreement was made after one year before the date of the filing of the petition, for services rendered * * * in connection with the case by such attorney." 11 U.S.C. 329(a). If the court concludes that the attorney's fee "exceeds the reasonable value of any such services," the bankruptcy court can cancel the fee agreement or order the return of any overpayment. 11 U.S.C. 329(b).

Section 330 of Title 11 sets out a non-exhaustive list of factors for courts to take into account in determining what level of compensation is reasonable for the payment of specified officers in bankruptcy proceedings. Attorneys are not included in the list of officers whose compensation is to be assessed under Section 330, see 11 U.S.C. 330, although many courts consult those factors for guidance in establishing reasonable fees. See Pet. App. 8a-9a (citing cases). In determining the amount of compensation that is reasonable under Section 330, courts consider, among other things, "whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title." 11 U.S.C. 330(a)(3)(A)(E).

2. Petitioner served as counsel in twelve consumer bankruptcy cases filed under Chapter 7 of the Bankruptcy Code, 11 U.S.C. 701 *et seq.* Pet. App. 2a. He charged his clients flat fees ranging from $1095 to $1900. *Id.* at 3a. The cases were "relatively simple,

no asset matters requiring minimal attorney time." *Id.* at 2a-3a. Attorneys in petitioner's firm "spent an average of only thirty-six minutes preparing the various bankruptcy petitions." *Id.* at 9a.

The Chapter 7 trustee in one of petitioner's cases requested the bankruptcy court to review the reasonableness of petitioner's fee under 11 U.S.C. 329. Pet. App. 3a-4a. The United States Trustee then investigated the fees charged by petitioner in other cases and concluded that the "fees were unreasonably high in light of the uncomplicated nature of the cases at issue." *Id.* at 4a. The United States Trustee accordingly challenged petitioner's fees in eleven cases. *Ibid.*, 11 U.S.C. 307; see Bankr. R. 2017 (11 U.S.C. App. 2017).

3. The bankruptcy court required petitioner to submit an itemization of the services provided in each case and conducted hearings on the reasonableness of the fees. Pet. App. 4a. The court then ruled that petitioner's fees were excessive. *Id.* at 7a, 62a. The court found that the average fee for "straightforward, simple Chapter 7 bankruptcy cases" in the area was $550, *id.* at 55a, and that petitioner had failed to substantiate the significantly higher fees that he charged. *Id.* at 62a ("[T]he modest to average legal performance of Mr. Geraci and of other lawyers in his firm combined with the relatively simple no-asset cases presently before the Court has not earned him the right to harvest the fees he seeks."). The court further noted that "[t]he itemizations supplied by [petitioner] indicate that Counsel is either unable or unwilling to supply detailed information from which the Court can properly evaluate the services

performed." *Id.* at 39a n.9.[1] Petitioner also failed to offer evidence of comparable fees charged by either bankruptcy or non-bankruptcy attorneys for analogous services. Pet. App. at 26a-37a.

Based on the evidence before it, the bankruptcy court concluded that a reasonable fee for petitioner's services in each of the twelve cases was $800, and ordered petitioner to disgorge any payments received in excess of that amount. The court further ruled that, in all future cases, petitioner would have the option of either providing detailed documentation supporting a fee in excess of $800 or accepting the $800 payment without the necessity of filing any application. Pet. App. 62a-63a.

The district court affirmed based on the bankruptcy court's "thorough and detailed examination of the matters," Pet. App. 22a, and petitioner's failure to offer any evidence justifying his fees, *id.* at 21a.

4. Petitioner appealed, and the court of appeals affirmed. Pet. App. 1a-16a. Petitioner, the court noted, had failed properly to document the fees charged. *Id.* at 4a-5a ("[Petitioner's] initial response to the court's order did not detail those services at all, but instead included a diatribe directed against the Trustee and bankruptcy practitioners in the Central District of Illinois."). The court of appeals also accepted the bankruptcy court's finding that "neither the experience, reputation, and ability of the attorneys from the Geraci firm, nor the results they had been able to obtain for their clients, justified the

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[1] The court found that none of the itemizations actually added up to the amount charged petitioner's clients. Pet. App. 40a.

significantly higher fees they had charged." *Id.* at 6a; see also *id.* at 10a.

The court of appeals also found unavailing petitioner's argument that the bankruptcy court should have compared his fees to those charged by comparably skilled attorneys in non-bankruptcy cases. Because petitioner charged a flat fee, the court explained, the bankruptcy court was unable to compare petitioner's hourly rates to those of non-bankruptcy practitioners. Pet. App. 10a-11a. Further, the record contained no evidence of what non-bankruptcy attorneys would charge for a comparable bundle of services. *Id.* at 11a. Under those circumstances, the court of appeals concluded, the bankruptcy court did not abuse its discretion in setting petitioner's fee based on comparable charges in the locale for similar bankruptcy cases. Finally, the court rejected petitioner's argument that the market, rather than the court, should define what fees are reasonable, explaining that Congress, through 11 U.S.C. 329, thought otherwise. Pet. App. 11a-13a.[2]

ARGUMENT

Petitioner contends (Pet. 3-7) that the court of appeals erred in failing to compare his fees to those charged by comparably skilled practitioners in non-bankruptcy cases. That claim is incorrect and, in any event, does not merit this Court's review.

Petitioner does not claim that the ruling of the court of appeals conflicts with any decision of this Court or with the rulings of any other circuit. Nor does he dispute that 11 U.S.C. 329 provides the rele-

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[2] The court also rejected petitioner's equal protection argument. Pet. App. 14a-16a. Petitioner does not seek this Court's review of that claim.

vant legal standard of reasonableness for evaluating his fees. Petitioner thus seeks an exercise of this Court's certiorari jurisdiction (Pet. 6-7) solely to review the court of appeals' application of the concededly correct legal standard to the particular facts of his case. That argument does not warrant further review for two reasons.

First, petitioner's claim presents no question of broad or enduring importance. The court's record-bound ruling regarding the amount of a reasonable fee petitioner may charge for a particular class of bankruptcy filings in Danville, Illinois, will have no significant impact on other cases, other practitioners, or other jurisdictions. Petitioner seeks only the correction of alleged error. Such claims do not customarily warrant this Court's review. See *Sumner* v. *Mata*, 449 U.S. 539, 543 (1981); *United States* v. *Johnston*, 268 U.S. 220, 227 (1925). Pure error review is particularly unjustified where, as here, the bankruptcy court, the district court, and the court of appeals all agreed in their assessment of the record and their application of the proper legal standard to it. See *Graver Tank & Mfg. Co.* v. *Linde Air Prods. Co.*, 336 U.S. 271, 275 (1949), adhered to on rehearing, 339 U.S. 605 (1950); see also *Exxon Co., U.S.A.* v. *Sofec, Inc.*, 517 U.S. 830, 841 (1996).

Second, no error occurred here. The court of appeals agreed that one factor courts should consider in evaluating the reasonableness of a fee is the value of a comparable bundle of non-bankruptcy services. Pet. App. 10a. Petitioner, however, bore the burden of justifying the reasonableness of his charges and thus of introducing evidence of analogous, non-bankruptcy fees. *Id.* at 9a (citing additional cases); cf. *Hensley* v.

Eckerhart, 461 U.S. 424, 437 (1983). The court of appeals concluded that petitioner wholly failed to meet that burden.

> [N]othing in the record establishes what attorneys in the community would charge in a non-bankruptcy context for such a comparable bundle of services. Indeed, nothing in the record indicates that there even exists a comparable bundle of legal services to which the services here may be compared.

Pet. App. 11a. Petitioner chose, instead, to justify his fees before the bankruptcy court by documenting the costs of cheeseburgers, gasoline, and rent. *Id.* at 31a.

Petitioner claims (Pet. 7) that the record contained affidavits "regarding fees of non-bankruptcy practitioners, all equivalent to or higher than what Petitioner charges." Petitioner does not claim, however, that those charges were for a comparable bundle of services. See Pet. App. 37a. In any event, disputes over the content of the record in a particular case do not merit this Court's review.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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